Supreme Court, U.S.
FILED

98 18 98 MAY 25 1998

No.

IN THE

# Supreme Court of the United States

ADLISA JOHNSON,

*Petitioner,*

*v.*

ROBERT E. RUBIN, *et al.*,

*Respondents.*

*On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit*

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the granting of a motion for summary judgment based on a statute of limitation undermines the rights of a party that fails to timely file a complaint because of his or her reliance of the action or inaction of the EEOC or the adverse party.

2. Whether the granting of a motion for summary judgment violates the due process clause of the Fourteenth Amendment and the standards of fair play established by the due process clause where the court arbitrarily clues the opposing party onto the issues to bring before it for summary judgment, and then construe all facts and inferences of the case in favor of such party.

## PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, The Internal Revenue Agency (IRS), The Equal Employment Opportunity Commission (EEOC).

## TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Parties to the Proceeding | ii |
| Table of Contents | iii |
| Table of Cited Authorities | iv |
| Table of Appendices | v |
| Opinions Below | 1 |
| Statement of Jurisdiction | 1 |
| Constitutional and Statutory Provisions Involved | 1 |
| Statement of the Case | 2 |
| The Proceedings Below | 3 |
| Reasons for Granting the Writ | 5 |
| I. The Petition Should Be Granted Because The Opinions In The Lower Courts Are Not Consistent With This Court's View On The Essential Due Process And Equal Protection Right Of A Litigant Or Its Own Prior Rulings. | 5 |
| Conclusion | 7 |

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*Adickes v. S.H. Kress & Co.* 398 U.S. 144 (1970) . 5

*Milam v. United Postal Service*, 674 F.2d 860 (11th Cir. 1989) ..... 6

**Statutes:**

28 U.S.C. § 1254(1) ..... 1

42 U.S.C. § 2000e, *et seq.* ..... 1

Civil Rights Act of 1964 ..... 1, 2, 5, 6

**United States Constitution:**

Fourteenth Amendment ..... i, 1, 4, 5

## TABLE OF APPENDICES

*Page*

Appendix A — Order Of The United States Court Of Appeals For The Eleventh Circuit Dated And Filed November 25, 1998 ..... 1a

Appendix B — Order Of The United States District Court For The Northern District Of Georgia, Atlanta Division Dated And Filed November 28, 1997 And Entered December 2, 1997 ..... 3a

Appendix C — Order Of The United States Court Of Appeals For The Eleventh Circuit Denying Petition For Rehearing Dated And Filed February 24, 1999 ..... 13a

Petitioner, Adlisa Johnson, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is not published, but can be found at App. A. The opinion of the district court is not published, but can be found at App. B.

## STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on November 25, 1998. The Court of Appeals denied a timely petition for rehearing on February 24, 1999 (App. C).

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law; Nor shall a state deny anyone in its jurisdiction the equal protection of the laws."

Additionally, Title VII of the Civil Rights Act of 1964 (As amended) and 42 U.S.C. § 2000e, *et seq.*, is contrary to discrimination in the workplace.

The Code of Federal Regulations (C.F.R.) Part 1614 provides in part: This rule revises the way that federal agencies will process administrative complaints and appeals of employment discrimination filed by federal employees.

## STATEMENT OF THE CASE

The distinguishing characteristic and fundamental question in this case is whether equitable modification should be applied when a litigant files an appeal to the EEOC with fifty-eight (58) days remaining from a Final Agency decision (FAD) letter to exercise her options, wherein, the letter received on August 19, 1995, informed the petitioner, that she had the right to: (1) appeal the decision of the Respondent to EEOC within 30 days of receipt of the FAD letter and; or (2) file a civil action within 90 days of receipt of the FAD letter, of course, it is now history that the EEOC received the appeal on day thirty-two (32). What is interesting about this ordeal, is the fact, the EEOC sent no notice to petitioner advising her of any fatal error on her part. However, the EEOC did respond after 168 days of receipt of the appeal and dismissed it as untimely. The dismissal of appeal letter on March 7, 1996 stated that petitioner had "the right to: (1) petition the EEOC to reconsider its dismissal of petitioner's appeal; or (2) file a civil action in United States District Court within 90 days of receipt of the dismissal letter". This dismissal of appeal letter was sent to both, petitioner and her attorney. On April 6, 1996, petitioner's attorney filed a timely motion for reconsideration with EEOC. However, before a decision was made on petitioner's motion for reconsideration, petitioner, acting *pro se* on the exhortation of the EEOC, on April 10, 1996, filed a Title VII action in United States District Court.

## THE PROCEEDINGS BELOW

On June 7, 1995 an Administrative Law Judge (ALJ) issued a decision finding that petitioner was harassed and discriminated against by respondents on her retaliation claim, but found no discrimination on petitioner's performance evaluation claims, however, and understandably, the self-serving agency found no discrimination on all claims. On August 19, 1995, petitioner's attorney received the FAD letter from the agency. The EEOC, after the elapse of 168 days the EEOC allege that it received the appeals two days outside the time that it allows for appeal and dismissed the case. On April 6, 1996, petitioner's attorney filed a motion for reconsideration. On April 10, 1996, petitioner, acting *pro se,* filed in district court. On June 3, 1996, petitioner received from the EEOC advising the agency of mandatory corrective action on petitioner's appeal. This action controverts the respondent's position as a matter of law, because, henceforth, the EEOC's final decision was not issued until January 6, 1997, all of this was brought to the court's attention in "PLAINTIFF'S RESPONSE TO DEFENDANT'S THIRD MOTION FOR SUMMARY JUDGMENT." On June 21, 1996, respondents filed a motion to dismiss or, in the alternative, for summary judgment against petitioner contending that district court lacked jurisdiction because petitioner had failed to exhaust her administrative remedies because her appeal was pending before the EEOC. As a result, the district court denied respondent's motion to dismiss. On July 24, 1996, respondents filed a second motion to dismiss or in the alternative, for summary judgment against petitioner, again, erroneously arguing the wrong issues. Notwithstanding, before denying the respondent's motion, the judge informed the respondents of the issue to raise in order to get their motion granted in his January 14, 1997 order. On July 10, 1997, respondents filed their third motion for summary

judgment against petitioner. On September 30, 1997, the magistrate judge, in an attempt to bring her *coup de grâce* to this case while ignoring credible evidence in the petitioner's timely filed objections on October 10, 1997, recommended the granting of summary judgment for the respondents. On November 28, 1997, Judge Willis B. Hunt, Jr., signed his order granting respondents summary judgment. On December 2, 1997, judgment was entered against petitioner for cost for this action. On December 4, 1997, petitioner filed her timely notice of appeal. On November 25, 1998, the Eleventh Circuit issued an unpublished opinion, affirming the district court's decision. On January 11, 1999, petitioner filed a timely petition for rehearing. On February 24, 1999, the court of appeals denied the petition for a rehearing.

In light of all the aforementioned, one can get the distinct impression that, there is no remedy; ignore the United States Constitution and forget the Fourteenth Amendment; tolerate racial discrimination, or you pay; and last but not least, appeal to another governmental agency and the window will close to further action, if not, we will pretend that it did. The petitioner has since filed a petition *en banc,* for a writ of mandamus because in these subsequent on-going discrimination cases, Judge Hunt has demonstrated that he is bias and not a detached adjudicator, his orders include an interpolation of words the litigant did not say and ignores contradictory affidavits, refuting depositions, and credible evidence, in an effort to dismiss the case.

## REASONS FOR GRANTING THE WRIT

### I.

### THE PETITION SHOULD BE GRANTED BECAUSE THE OPINIONS IN THE LOWER COURTS ARE NOT CONSISTENT WITH THIS COURT'S VIEW ON THE ESSENTIAL DUE PROCESS AND EQUAL PROTECTION RIGHT OF A LITIGANT OR ITS OWN PRIOR RULINGS.

Ms. Johnson's petition for writ of certiorari should be granted because the opinions of the lower courts conflicts with this Court's prior rulings on a litigant's rights to equal protection and due process of the law. Racial discrimination was the major target of the Fourteenth Amendment as well as the Civil Rights Act of 1964. The merits of this case warrants special consideration of the non-moving party, *i.e.*, evidence and factual inferences arising therefrom are to be viewed, "in the light and with all reasonable inferences most favorable to the non-moving party." *Adickes v. S.H. Kress & Co.* 398 U.S. 144, 157 (1970).

The district court and the EEOC was well aware that petitioner had 58 days remaining, if she just wanted to go to district court, instead, under the C.F.R., she relied on the EEOC to deal with her charges, as stated earlier, this was one of her options. The EEOC after receiving this timely appeal gave petitioner no indication that she would commit a fatal error if she did not go to district court, in fact she did not hear from the EEOC until after 168 days to inform her of filing an untimely appeal and they did give her other options, *i.e.*, 90 days to file in district court or petition the EEOC for a reconsideration. The tolling modification would not have

prejudiced the respondent. After all, they have two subsequent complaints, alleging retaliation for the filing of the instant case.

When the district court judge informed the respondents of what issue to bring, it was not clear at that juncture whether the judge was bias, it only exhibited a lack of judicial restraint. It was the second case that made his bias clear and convincing, and that he was not a detached adjudicator. The Eleventh Circuit has made prior rulings with respect to equitable tolling, it ruled in the case of *Milam v. United Postal Service*, 674 F.2d 860 (11th Cir. 1989) and petitioner submits that her situation falls within the category of "the employee justifiably relying on misinformation regarding the nature of her rights under Title VII." This makes the instant ruling inconsistent.

The EEOC compliance manual in § 4.3(b)(1) states clearly, that it will not dismiss an untimely Title VII charge that clearly provides a reasonable basis for modifying the charge period. Further, it stands to reason, that Congress did not provide the option of reconsideration to undermine a litigant of their Title VII rights if the EEOC has not responded within the 90 day filing period. This Court is asked to scrutinize this case because petitioner did not receive the EEOC's final decision until January 6, 1997. Both the C.F.R. and Title VII statute provides that: "the 90-day period in which an aggrieved party may file a civil action in district court does not begin to run until the Commission takes final action." There was no express language within the dismissal letter that the dismissal letter was final, instead, it gave petitioner two options.

## CONCLUSION

This Honorable Court is respectfully asked to make uniform all of the differing opinions with respect to Title VII's interpretations, since it is one statute and should be applied uniformly in all jurisdictions. By granting this writ it can also correct the Eleventh Circuit's decision that over a period of time has a tendency to stray from the norm and defies this court's views on the "law of the land." In so doing with this Court's supervision, will afford petitioner the right to address all of the other important issues of discrimination that is rife in this case.

Petitioner humbly requests at this Court's discretion that this petition for writ of certiorari be granted.

Respectfully submitted,

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